



BILLING CODE: 4510-27-P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collections
Pertaining to Special Employment Under the Fair Labor Standards Act

AGENCY: Wage and Hour Division, Department of Labor

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed revision to the information collection request (ICR) titled, "Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act."

This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq.

This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the FOR FURTHER INFORMATION CONTACT section of this Notice.

DATES: Written comments must be submitted to the office listed in the ADDRESSES section below on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Control Number 1235-0001, by either one of the following methods: E-mail: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier: Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Monty Navarro, Acting Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Materials associated with this information collection may be reviewed at:

<http://www.dol.gov/whd/specialemployment/14cpra.htm>. Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request,

by calling (202) 693-0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889-5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background: The Wage and Hour Division (WHD) of the Department of Labor administers the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, et seq., which sets the Federal minimum wage, overtime pay, recordkeeping, and youth employment standards of most general application. See 29 U.S.C. 206, 207, 211, 212. FLSA section 14(c) provides that the Secretary of Labor, “to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals ” whose productivity for the work performed is limited by disability at subminimum wages commensurate with the individual’s productivity. 29 U.S.C. 214(c). In accordance with section 14(c), the WHD regulates the employment of individuals with disabilities under special certificates and governs the application and approval process for obtaining the certificates. See 29 CFR Part 525. DOL proposes to revise Form WH-226, the Application for Authority to Employ Workers with Disabilities at Special Minimum Wages, and WH-226A, the Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages. The proposed new information collections on these forms will assist DOL in fulfilling its statutory directive to administer and enforce the section 14(c) program, including the new conditions introduced to section 14(c) certificate holders pursuant to the Workforce Innovation and Opportunity Act (WIOA), which was signed into law on July 22, 2014. Forms WH-226 and WH-226A are the only information collections under Control Number 1235-0001 that DOL proposes to revise at this time.

In addition, section 11(d) of the FLSA authorizes the Secretary of Labor to regulate, restrict, or prohibit industrial homework as necessary to prevent circumvention or evasion of the minimum wage requirements of the Act. 29 U.S.C. 211(d). Pursuant to section 11(d), the WHD issues special certificates governing the employment of individual homeworkers and employers of homeworkers. DOL restricts homework in seven industries (i.e., knitted outerwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries) to those employers who obtain certificates. See 29 CFR 530.1, 530.2. The DOL may issue individual certificates in those industries for an individual homemaker (1) who is unable to adjust to factory work because of a disability or who must remain at home to care for a person with a disability in the home, and (2) who has been engaged in industrial homework in the particular industry prior to certain specified dates as set forth in the regulations or is engaged in industrial homework under the supervision of a State Vocational Rehabilitation Agency. See 29 CFR 530.3, 530.4. The DOL also allows employers to obtain general (employer) certificates to employ homeworkers in all restricted industries, except women's apparel and hazardous jewelry manufacturing operations. See 29 CFR 530.101. Form WH-2, the Application for Special Industrial Homemaker's Certificate, and Form WH-46, the Application for Certificate to Employ Homeworkers, are used in the application process for obtaining these certificates, and Form WH-75, Homemaker Handbook, is used to assist with recordkeeping. No revisions to these forms are proposed at this time.

The FLSA also requires that the Secretary of Labor, to the extent necessary to prevent curtailment of employment opportunities, provide certificates authorizing the

employment of full-time students at: (1) not less than 85 percent of the applicable minimum wage or less than \$1.60, whichever is higher, in retail or service establishments or in institutions of higher education (29 U.S.C. 214(b)(1), (3); 29 CFR Part 519); and (2) not less than 85 percent of the applicable minimum wage or less than \$1.30, whichever is higher, in agriculture (29 U.S.C. 214(b)(2), 29 CFR Part 519). The FLSA and the regulations set forth the application requirements as well as the terms and conditions for the employment of full-time students at subminimum wages under certificates and temporary authorization to employ such students at subminimum wages. The forms used to apply for these certificates are WH-200 (retail, service, or agricultural employers seeking to employ full-time students for 10 percent or more of total monthly hours of employment), WH-201 (institution of higher learning seeking to employ its students), and WH-202 (retail, service, or agricultural employers seeking to employ six or fewer full-time students). No revisions to these forms are proposed at this time.

FLSA section 14(a) requires that the Secretary of Labor, to the extent necessary to prevent curtailment of employment opportunities, provide by regulations or order for the employment of learners, apprentices, and messengers who, under special certificates may be paid less than the statutory minimum wage. See 29 U.S.C. 214(a). This section also authorizes the Secretary to set limitations on such employment as to time, number, proportion, and length of service. The regulations at 29 CFR Part 520 contain the provisions that implement the section 14(a) requirements. Form WH-205 is the application an employer uses to obtain a certificate to employ student-learners at wages lower than the federal minimum wage. Form WH-209 is the application an employer uses to request a certificate authorizing the employer to employ learners and/or

messengers at subminimum wage rates. Regulations issued by the DOL's Office of Apprenticeship no longer permit the payment of subminimum wages to apprentices in an approved program; therefore, DOL has not issued apprentice certificates since 1987. See 29 CFR 29.5(b)(5). However, the WHD must maintain the information collection for apprentice certificates in order for the agency to fulfill its statutory obligation under FLSA to maintain this program. No revisions to these forms are proposed at this time.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks an approval for the revision of this information collection in order to ensure effective administration of various special employment programs.

Type of Review: Revision.

Agency: Wage and Hour Division.

Title: Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act

OMB Number: 1235-0001

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms, State, Local, or Tribal Government.

Agency Numbers: Forms WH-2, WH-46, WH-75, WH-200, WH-201, WH-202, WH-205, WH-209, WH-226, WH-226A.

Total Respondents: 4,355

Total Annual Responses: 10,300

Estimated Total Burden Hours: 15,178

Estimated Time per Response: Ranges from 10 minutes to 120 minutes depending on the form.

Frequency: On occasion.

Total Burden Cost (capital/startup): \$0

Total Burden Cost (operation/maintenance): \$3,498

DATED: July 31, 2015

Mary Ziegler,

Assistant Administrator for Policy

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